

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-488

October 4, 2001

PUBLIC UTILITIES COMMISSION
Re: Rulemaking to Amend
Chapter 204, Basic-Service Calling Area

ORDER ADOPTING
AMENDED RULE

WELCH, Chairman; DIAMOND and NUGENT, Commissioners

I. SUMMARY

In this Order, we adopt revisions to Chapter 204 (65-407 CMR 204), Basic-Service Calling Area. This rule establishes the criteria and the procedures that the Commission, local exchange carriers and others who provide basic telephone service in Maine will follow to establish and change basic-service calling areas (BSCAs). The statutory authority for the proposed amendments is contained in 35-A M.R.S.A. § 7303-A, which became effective September 21, 2001. P.L. 2001, ch. 106. The statute requires the Commission to adopt implementing rules by October 21, 2001. The rule we adopt here is intended to reflect the requirements of the new law.

II. BACKGROUND

By Notice of Rulemaking dated July 24, 2001, we initiated a rulemaking to revise the waiver provisions of Chapter 204. We received written comments from Verizon-Maine and the Telephone Association of Maine (TAM). A public hearing was neither requested nor held.

Chapter 204 requires all local exchange carriers (LECs) in Maine to analyze residential toll traffic data in each exchange every five years to determine which exchanges if any, meet the Rule's threshold requirements for expansion of local calling areas. Under the Rule, an exchange will automatically be added to another exchange's calling area if 50% of the exchange's residential customers make four or more calls to the target exchange during a test month. The Rule also contains waiver provisions. LECs may request waivers from the Rule's automatic BSCA expansion requirements. Customers may request a waiver from the Rule's minimum calling requirements, which request may result in the expansion of BSCAs that do not meet the Rule's threshold requirements.

During its most recent session, the Legislature enacted 35-A M.R.S.A. §7303-A, which directs the Commission to provide an additional waiver mechanism specifically for customers in single exchange areas. The Commission is instructed by §7303-A to open a proceeding to investigate expanding a BSCA if it receives a written petition of 50 or more customers of a LEC who receive local, flat-rate, basic service within no more than a single exchange area. The statute also requires the Commission to hold at least one

public hearing and issue an order either expanding the BSCA, or explaining why the BSCA will not be expanded, within six months of the filing of the petition. The Commission may allow carriers affected by § 7303-A to recover reasonable costs, including lost revenues attributable to the expansion. Finally, the Commission must establish standards for expanding single exchange BSCAs under this waiver mechanism no later than 30 days after the statute becomes effective (October 21, 2001).

To satisfy the immediate requirements of § 7303-A, we adopt revisions to Chapter 204 to include both the additional waiver provision for customers in single exchange areas and the standards for expanding BSCAs in response to customer requested waivers. We plan further revisions to Chapter 204, addressing broader issues regarding calling areas statewide.

III. DISCUSSION OF COMMENTS

Verizon and TAM filed comments regarding two aspects of the proposed revisions – cost recovery for calling area expansions and the standards the Commission will apply in considering waiver requests.

A. Cost Recovery

Section 7303-A states; “If the commission expands the basic service calling area pursuant to this subsection, the commission may allow a carrier affected by the expansion to recover, to the extent reasonable, its costs, including lost revenues, attributable to the expansion.” In our proposed rule revisions, we added language to incorporate that requirement to Part VIII (B)(2)(b). Verizon states that this new provision is unnecessary, as Chapter 204 already has an entire part (Part VII) pertaining to cost recovery of BSCA route expansion, and that the existing Part VII of the rule should govern any enlargement of a BSCA. Verizon further states that there is no need for the last sentence in Part VIII (B)(2)(b) of the proposed rule. TAM states that the Commission should not make an exception to the cost recovery mechanism of Chapter 204 for single-exchange calling areas and that carriers should be allowed to recover costs in accordance with the rule as it currently exists. TAM recommended language that it felt would clarify that cost recovery would be in accordance with Part VII of the rule.

We agree with both Verizon and TAM regarding the redundancy of the last sentence in the proposed Part VIII (B)(2)(b). We have modified that section by deleting the last sentence and will rely on Part VII of the rule.

B. Waiver Standards

Verizon states that the proposed language regarding waiver standards is susceptible to ambiguous interpretation and that the Commission should provide clarification. Verizon believes that the proposed language indicates that the

Commission will apply a two-pronged test to any petition for expansion: one, that a sufficient community of calling interest exists; and two, that a clear public interest with respect to the “other factors,” such as cost, revenue and rate impacts, also exists. Verizon states that the rule should be amended to make clear that the standards do indeed contemplate a two-pronged test, because a community calling interest alone should not be determinative of whether an expansion is in the public interest, since a carrier’s rates for *all* subscribers may be affected by a BSCA expansion (emphasis in Verizon’s comments).

TAM states that the Commission should not propose standards for other than single-exchange calling area petitions, as it is not appropriate to propose changes which would affect the entire BSCA rule in this proceeding. TAM states that some parties to the BSCA Rule Inquiry (Docket 2000-752) who would have an interest in the proposed changes may not be participating in this proceeding and that any proposal to add standards to all waiver requests should be considered in Docket 2000-752 or any subsequent proceeding that addresses the entire BSCA Rule. TAM, however, does propose language for the standards section that would prioritize when expansion of a BSCA is in the public interest, similar to Verizon’s two-pronged test comment. TAM believes that the proposed structure of this section inappropriately de-emphasizes the rate impacts to those customers who do not make a significant number of calls to the proposed receiving exchange and that the Commission should ensure that a “real cost-benefit analysis is done before any BSCA waiver request for single-exchange calling areas would be granted or denied.”

While we believe that the adopted rule language clearly indicates the many factors that the Commission considers before granting or denying a waiver request, we agree that the proposed language was somewhat confusing and have revised that section of the adopted rule. We have attempted to list those that have been considered in previous waiver requests. It is more than just the “two-prong test” that Verizon suggests in its comments. Each waiver request is considered on a case-by-case basis, with as many relevant factors investigated as necessary.

We have not “de-emphasized” the rate impact, as TAM’s comments would suggest. On the contrary, affordability and its impact on the “take-rate” for the expanded option is an important consideration. We also believe that customers in any area that request expansion should be on notice that they may have to pay for the larger calling areas with higher “premium rates.” We have, however, simply listed the many factors that must be considered before granting or denying a waiver request.

We disagree with TAM’s comment that the standards section should only apply to single-exchange waiver requests. We believe that we should apply standards to both types of customer initiated waiver requests, because not only should all customers be aware of the standards, but also these are standards we have applied in the past. When combined with the mechanisms in Part VII, the standards are a useful articulation of how the Commission views these requests. Finally, all interested persons

in Docket 2000-752 were provided notice of this rule making and had the opportunity to submit comments.

IV. DISCUSSION OF ADOPTED REVISIONS

In order to comply with the requirements of 35-A M.R.S.A. § 7303-A, we amended Chapter 204 to include the definition of “Single Exchange Area,” a waiver mechanism for 50 or more customers in a single exchange area, and standards for evaluating customer requested waivers.

A. Section I(O): Definitions

We added “Single Exchange Area” to the terms defined. “Single Exchange Area” is defined as “a basic-service calling area that includes only a single exchange.” This definition is added as Section I(O) and the term “Telephone Company” renumbered Section I(P).

B. Section VIII(B): Customer Waivers

We reorganized and added two new provisions to Section VIII(B). New Section VIII(B) includes three subsections, VIII(B)(1), “30% or 1,000 Customers in Any Exchange Area,” VIII(B)(2), “50 or More Customers in a Single Exchange Area,” and VIII(B)(3), “Standards.”

1. Section VIII(B)(1): 30% or 1,000 Customers in Any Exchange Area

We added the heading “30% or 1,000 Customers in Any Exchange Area” to Section VIII(B)(1) in order to distinguish the “any area” waiver process from new section VIII(B)(2) which describes the waiver process for “50 or More Customers in a Single Exchange Area.” Within Section VIII(B)(1) two subsections are created to reflect (a) the requirements of the written waiver under this section and (b) the Commission’s obligations upon receipt of a waiver submitted pursuant to this section. The text of Section VIII(B)(1)(a) is edited to emphasize the distinction between this waiver process and the “single exchange area” waiver process. The last two sentences of Section VIII(B)(1) are modified to provide more general requirements for the content of a written waiver request to simplify the request process. We eliminate the requirement that the lead customer copy the Public Advocate to lessen the burden on customers and because the Public Advocate already receives notice from the Commission of all filings at the Commission.

2. Section VIII(B)(2): 50 or More Customers in a Single Exchange Area

We added new Section VIII(B)(2), “50 or More Customers in a Single Exchange Area,” to meet the requirements of 35-A M.R.S.A. § 7303-A. Section VIII(B)(2) is broken into two subsections, (a) and (b). Under Section VIII(B)(2)(a), fifty or

more customers in a single exchange area may request a waiver of the threshold requirements for expansion of their BSCA. This section also details what a written waiver request must contain.

Section VIII(B)(2)(b) describes the Commission's obligations upon receipt of a waiver submitted pursuant to Section VIII(B)(2). These obligations differ from the obligations contained in Section VIII(B)(1)(b) because 35-A M.R.S.A. § 7303-A requires the Commission to take particular actions within a specified time in response to a "single exchange area" waiver request. If the Commission receives a "single exchange area" waiver request, the Commission must open a proceeding and hold at least one hearing, while if the Commission receives an "any area" waiver request, the Commission has discretion whether or not to open a proceeding, solicit written comments and hold hearings. In response to a "single exchange area" waiver request, the Commission must issue an order that either expands the BSCA or explains why the BSCA will not be expanded. This order must be issued within six months of receiving the written waiver request. In response to Verizon and TAM's comments, we have modified the section by deleting the last sentence and will rely on Part VII of the rule.

3. Section VIII(B)(3): Standards

We added new Section VIII(B)(3), "Standards," to fulfill 35-A M.R.S.A. § 7303-A(2)'s requirement that the Commission establish standards for evaluating "single exchange area" waiver requests no later than October 21, 2001. The standards reflect the factors the Commission has previously used to determine whether a "sufficient community of interest" exists between two communities and other factors relevant to waiver requests. Although, 35-A M.R.S.A. § 7303-A(2) requires that standards only be established for "single exchange area" waiver requests, the standards articulated apply to both types of customer requested waivers. The Commission therefore will apply new Section VIII(B)(3) to all customer requested waivers. Under Section VIII(B)(3), the Commission may consider, but is not limited to, eight factors to determine whether a "sufficient community of interest" exists. These factors include employment patterns, available medical services, and location of schools. Other factors the Commission may consider in evaluating a customer requested waiver include cost, revenue and rate impact.

Accordingly, we order

1. That the attached Chapter 204, Basic-Service Calling Area, is adopted;
2. That the Administrative Director sends a copy of this Order and the attached rule to:

The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5);

Executive Director of the Legislative Council, State House Station 115,
Augusta, Maine 04333 (20 copies).

3. That the Administrative Director sends notice of this Order to:

All incumbent local exchange carriers in the State of Maine;

Competitive local exchange carriers and competitive interexchange carriers that paid the Commission regulatory assessment in 2000;

Parties who submitted comments and interested persons in Docket No. 2000-752;

All people who have filed with the Commission within the past year a written request for any Notice of Rulemaking.

Dated at Augusta, Maine, this 4th day of October, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond